

MILK RIVER WATERSHED NEWS

Tester's Perspective on Issues Facing the Milk River

U.S. Senator Jon Tester
April 18, 2008

I often hear people call Highway 2 or Amtrak's Empire Builder the "lifeline" of the Hi-Line. You could call the St. Mary's Canal and the Milk River Basin its *lifeblood*.

It's a fragile water system that serves thousands of folks in northern Montana. Farmers need it for irrigation. Local communities rely on it for recreation and fishing. And 14,000 people count on it for drinking.

As a dryland grain farmer, I don't irrigate my farm west of Big Sandy. But make no mistake, I fully understand how important water is to our entire state. And I know how complicated the St. Mary's Canal issue is. It's an issue I've been working on since my days in the state legislature—long before becoming a U.S. Senator.

Anywhere from 70 to 90 percent of water in the Milk River Basin comes from the St. Mary's River. Without it, the basin would run dry six out of every ten years.

The U.S. Bureau of Reclamation dropped the ball over the last 100 years or so by failing to maintain the St. Mary's Canal. Now it's falling apart. It's part of our basic infrastructure in need of serious, immediate rehab.

Too many folks rely on the Milk River water system. Yet President Bush and his administration continue to underfund its rehabilitation. This simply isn't acceptable. If the St. Mary's Canal fails it will cause an environmental catastrophe on the Blackfeet Reservation. And it will devastate Montana's agricultural economy from Havre to Glasgow. So you could say only people who need food should be worried about this.

That's why last year, Max Baucus and I finally authorized the Army Corps of Engineers to rehabilitate the St. Mary's Canal. And we will fight to keep this ongoing project funded. Our next steps are finalizing

the effort between the Army Corps and the Bureau of Reclamation and completing any environmental studies. When the studies are done we're lined up to start moving shovels to get the canal fixed.



Senator Jon Tester

Why has this been such a complicated issue? The Milk River Basin is a water system that serves three tribes, two rivers, two countries and a whole lot of land. But again, we're making progress.

On April 17, I brought Randy Reed, co-chair of the St. Mary's Canal Rehabilitation Working Group, out to Washington to testify in front of the Senate Energy and Natural Resources Committee on the importance of this project. Randy and the other members of the St. Mary's Canal working group are leading the way in finding a solution to this problem and deserve the credit for forward movement on this project.

It's working together like this that will keep the project moving forward. It's something that's very important to me not only as your U.S. Senator, but as a Hi-Line family farmer. Please keep in touch as we move forward together.

U.S. Senator Jon Tester is a third-generation family farmer from Big Sandy, Montana.

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Blackfeet Tribe – Montana Water Rights Compact

*Jay Weiner
RWRC Staff Attorney*

The Blackfeet Tribe of the Blackfeet Indian Reservation, the State of Montana and the United States have long been in negotiations to settle all existing claims to water of or on behalf of the Blackfeet Tribe within the exterior boundaries of the Reservation. The negotiations for the conclusion of a settlement (called a "Compact") of the federal Indian-reserved water rights claims of the Tribe, its members and allottees, is an integral part of the general adjudication of water rights within the State of Montana.

The Parties have recently concluded a Compact that is now subject to ratification. The Compact resolves the federal-Indian reserved water rights on the Blackfeet Indian Reservation. It seeks to balance a fair recognition of these rights with protections for existing water users who claim rights under State law. The Compact quantifies the Blackfeet Tribe's rights in the six drainages on the Reservation: Birch Creek, Badger Creek, Cut Bank Creek, the Two Medicine River, the Milk River and the St. Mary River. The water rights in those drainages are quantified in the Compact as follows:

St. Mary River

- A. 50,000 acre-feet Tribal right to the St. Mary River, which may only be developed in a manner that does not harm the Mille Lacs Project;
- B. Tribal right to all ground water not subject to the 1909 Boundary Waters Treaty;
- C. Tribal right to the rest of the water in Lee and Willow Creek after satisfaction of all water rights arising under state law.

Birch Creek

- A. 100 cfs Tribal irrigation right subject to place of use limitation (“Upper Birch Creek Drainage”) and management constraints of Birch Creek Management Plan (rule of reasonableness);
- B. 25 cfs Tribal in-stream flow (ISF) right from October 1 to March 31 and 15 cfs ISF right from April 1 to September 30 (the Tribe may freely reduce that ISF right and allocate the difference for other purposes so long the ISF flow doesn’t drop below 10 cfs);
- C. Tribal right to all non-hydrologically connected groundwater;
- D. “Rest of Flow” Tribal right (i.e. after satisfaction of the senior Tribal irrigation and ISF rights and all uses under state law, the Tribe may use the rest of the water remaining in Birch Creek);
- E. Tributary Protection – no water users on Birch Creek tributaries may be called out by the Tribe to satisfy the Tribe’s ISF right;

F. Deferral – the Tribe may not implement its ISF right or expand its irrigation right beyond current practice (defined as a maximum of 36 cfs) until January, 2023 (pursuant to the Birch Creek deferral agreement, a separate agreement from the Compact, entered into by the Tribe and the State in January, 2008).

Badger Creek and the Two Medicine River

- A. Tribal right to the rest of the water in these drainages after satisfaction of all water rights arising under state law;
- B. 20 cfs Tribal ISF right in both drainages;
- C. Tribal right to all non-hydrologically connected groundwater;
- D. No water rights arising under state law in these drainages may be called to satisfy Tribal uses other than ISF.



Cut Bank Creek and the Milk River

- A. Tribal right to the rest of the water in these drainages after satisfaction of all water rights arising under state law;
- B. 2 cfs Tribal ISF right in both drainages;
- C. Tribal right to all non-hydrologically connected groundwater;
- D. 10 year deferral period until the Tribe may develop new irrigation uses in these drainages.
- E. No non-irrigation water rights arising under state law in these drainages may be called to satisfy Tribal uses other than ISF.

In addition, the Compact provides for the closure of the on-reservation portions of Water Court Basins 40F, 40T, 41L and 41M, as well as the mainstem of the reservation boundary streams Birch Creek, Cut Bank Creek and the Two Medicine River, to new appropriations under state law, with the exception of those small uses excepted from the State permitting process.

The Compact also sets up an administrative scheme for tribal and state law-based water rights. In general, the Tribe administers the Tribal Water Right, the State administers water rights arising under state law, and any conflicts between a user of a right under tribal law and a right under state law.

Disputes over the interpretation of the Compact are heard in the first instance by a three-member Compact Board. One of the Board's members is appointed by the Governor, one by the Tribal Council and the third member by the first two appointees. The Board is empowered to appoint water commissioners to ensure the proper day-to-day distribution of water under the rights recognized in and protected by the Compact.

There are also Special Rules for Changes to the Tribe's Birch Creek irrigation right. To protect Birch Creek water users, the Tribe may

only change the place of use or the purpose of use of its 100 cfs irrigation right under very limited circumstances. The place of use may be changed only to acres in the Badger-Fisher use of the Blackfeet Irrigation Project, only when there is a physical need for water (which is anticipated to be infrequently, if ever, due to the rehabilitation of the Four Horns system and the comparative water richness of the Badger system as compared to Birch Creek) and only with a defined efficiency percentage. Any change to the purpose of use is subject to a hard volume cap.

Ratification means that the Compact must be formally approved by the Montana legislature, and the Blackfeet Tribe, and by Congress. Congress will also need to authorize and appropriate funding for tribal development of its water rights and for contributions for measures to mitigate the impacts of tribal development on State law-based water users. The State anticipates making significant contributions to these mitigation efforts as well. The order of State and federal approval remains to be determined. After the State and federal governments have approved the Compact it will be submitted to the Tribal membership for final approval. After ratification by all three Parties, the terms of the Compact must be included in a decree to be issued by the Montana Water Court.

In the event the Compact is not ratified by one of the parties, the Tribe's water rights will need to be resolved in litigation. The litigation alternative will not provide the opportunities afforded in the compact process for tribal

development of its water resources, federal/state funding, or mitigation for State-law based water rights.

Fort Belknap Indian Community – Montana Water Rights Compact

The Fort Belknap-Montana Compact was ratified by the Montana legislature in 2001 but still needs congressional ratification before it can be finally approved by the Ft. Belknap Tribes and decreed by the Montana Water Court. The Tribes and the Compact Commission continue to work on draft federal legislation and hope to have a bill to ratify the Compact introduced in Congress at some point in the near future.

CALENDAR EVENTS

May 9 - Valley County Conservation District Outdoor Classroom. For more information contact Pat Johnson at (406) 228-4321

May 13 - Hill County Conservation District Milk River Float Trip. For more information contact Shannon Patterson at (406) 265-6792

July 8 - Milk River Watershed Alliance quarterly meeting. For more information contact Christine Muller at (406) 372-3131

July 10 - Philips County Weed Tour. For more information contact Pat Anderson at (406) 654-1334

Representatives on the Milk River JBC:

Kay Blatter	Chairman
Don Green	Vice-Chairman
Wade Jones	Secretary
Lee Cornwell	Member
Wes Pankratz	Member
Ralph Snider	Member
Brad Tilleman	Member
Jeff Warburton	Member
Joe Brummer	Member
Joe Nicholson	Member
Jennifer Brandon	Project Manager

Fort Belknap Irr. Dist.
Malta Irr. Dist.
Malta Irr. Dist.
Glasgow Irr. Dist.
Glasgow Irr. Dist.
Harlem Irr. Dist.
Zurich Irr. Dist.
Paradise Valley Irr. Dist.
Alfalfa Valley Irr. Dist.
Dodson Irr. Dist.



St. Mary Canal Start Up a Challenge

Al Steiner, Bureau of Reclamation

March 2008 brought significant snowfall to the Babb area, making travel along the St. Mary Canal difficult to impassable and hampering start up activities.

Preparations for starting up the St. Mary system included using track hoes to trench a path through snow for water to flow; digging out drains to close and seal them; and making adjustments to older expansion/contraction joints.

Once preparatory work was completed, the head gates were cracked open to allow 20 to 30 cfs to flow, helping to create a channel for higher flows. In anticipation of increasing canal flows on March 27, releases from Sherburne Reservoir began on March 24. On March 25th the smaller flow reached Halls Coulee siphon. Reclamation staff, doing routine inspection found one of the new expansion/contraction joints, installed by a contractor last fall, was leaking (*see photos*).

Flows from Sherburne, and diversions into the canal were stopped; the canal drained; and the

Expansion/contraction joint leaking on the Halls Coulee Siphon.



Below: Dewatering the St. Mary Canal at the St. Mary Siphon.



contractor was asked to come on site and adjust the followers on the packing. Adjustments were made and operations were resumed on April 2.

The contractor elected not to make further adjustments to the joints feeling the joints were correctly tightened by the fabricators last fall.

LINKS

Senate Energy and Natural Resource Committee hears testimony regarding the St. Mary rehabilitation:

<http://www.billingsgazette.net/articles/2008/04/18/news/state/47-waterprojects.txt>

Drought Information:

<http://drought.mt.gov>

<http://nris.state.mt.us/Drought/>

Montana Water Resources:

<http://water.montana.edu/>

Milk River Watershed Alliance Up and Running

Christine Muller, Watershed Coordinator

Upcoming events: The Milk River Watershed Alliance is planning Milk River Float trips over the next couple of months. The first float trip is planned in Hill County, (Havre) on May 13th. This will be a fun event and the public is welcome. Registration is limited and forms will be available by May 1st at the locations listed below. A float trip is planned for each county over the next few months so please contact the Milk River Watershed Alliance Coordinator or one of the Conservation Districts listed below for registration forms or information on the float trips.

The Milk River Watershed Alliance is also sponsoring a logo contest open to individuals from the four communities of Blaine, Hill, Phillips and Valley. The logo should reflect the MRWA's mission and represent the unique landscape in the Milk River watershed, and express a spirit of partnership. The logo should be easily reproduced. A cash prize of \$100 will be awarded to the artist whose work is chosen to represent the Milk River Watershed Alliance. The logo will become the property of

the Milk River Watershed Alliance and be used on all promotional material produced by the Alliance. Only original works will be accepted. If you are interested in participating in the MRWA logo contest, please submit your entries via email to one of the contact people listed below. The deadline for submission of logo ideas is June 1, 2008.

The Milk River Watershed Alliance meets quarterly and the next scheduled meeting is July 8th from 1:00-3:00 in Chinook. Meetings are open to the public. For more information please contact:

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Our Mission: The Milk River Watershed Alliance (MRWA) is a locally led organization working together to preserve, protect, and enhance natural resources within the Milk River watershed while maintaining the quality of life.

The MRWA is a group of basin residents, Conservation Districts, Natural Resource Managers, Tribes, and municipalities working together and covers the four counties of Blaine, Hill, Phillips, and Valley.

Working Group Loses Two Individuals



Marko Manoukian, Phillips County Extension Agent and St. Mary Rehabilitation Working Group Member

The St. Mary Rehabilitation Working Group, the Hi-Line, and our State lost two outstanding individuals over the past year. Kevin Salsbery, a Malta irrigator and rancher and former Lt. Governor, Carl Ohs will be greatly missed. In 2003, then Lt. Governor Ohs convened a meeting in Havre where over 200 people attended. The purpose for the meeting was to bear light on the aging infrastructure of the St. Mary



Former Lt. Governor Carl Ohs

irrigation system and provide an opportunity for everyone to become involved. Lt. Governor Ohs chaired the working group from its infancy and provided the leadership that has allowed the Working Group to be successful today.

Kevin served on the local Malta Irrigation District Board before coming to the St. Mary Working Group as a member. As an irrigation board

member Kevin provided leadership in rehabilitating and remodeling the Dodson Diversion



Kevin Salsbery

Dam that has been beneficial to the Malta District and other downstream users. As a Working Group Member, Kevin was a member of the Engineering Committee that led to the hiring of an engineering firm

to perform the preliminary engineering report as well as provide valuable information on how irrigation districts manage under the US Bureau of Reclamation.

Both of these fine individuals will be greatly missed locally and regionally. Their contribution and dedication to this project is greatly appreciated.

Milk River Water Supply

*Jeremy Giovando, Bureau of Reclamation
April 23, 2008*

The water supply conditions in the Milk River basin are quite variable this season. The total storage for the Milk River Project is currently below average for this time of year. Storage in Lake Sherburne, Fresno and Nelson Reservoirs is 61, 58 and 88 percent of average, respectively. In contrast the snowpack appears to be much better than the last several years. Operations began this season in typical fashion, with diversions to the St. Mary Canal beginning on March 19. This diversion was a small flow to remove snow and ice. Releases from Lake Sherburne were initiated on March 24 to begin moving winter storage to Fresno Reservoir. However releases were discontinued on March 26 after the St. Mary Canal had to be dewatered due to necessary adjustments in the new siphon joints. Releases and diversion were again initiated on April 2 and 4, respectively.

The current diversion rate is approximately 500 cfs through the St. Mary Canal siphon and this rate is anticipated to remain constant through the end of the April. If weather conditions continue to remain cool, it may be necessary to reduce the diversion rate when all of the winter storage in Lake Sherburne has been moved to the Milk River. Total water diverted to date through the canal is approximately 14,000 acre-feet, which is 95 percent of average.

Fresno Reservoir releases were increased on March 21 to transfer water to Nelson Reservoir. The current release from Fresno for both transferring storage to Nelson Reservoir and allowing some early irrigation is approximately 220 cfs.

Early spring inflows to both Lake Sherburne and Fresno Reservoir remain much below average. The

March inflows for these reservoirs were 39 and 18 percent of average respectively. It is anticipated that without precipitation to contribute to Milk River runoff and to augment St. Mary Canal diversions, it will be difficult to fill Fresno Reservoir prior to irrigation demands in mid-May. The next 2-3 weeks of inflows will probably determine the overall water supply for the Project.

The snowpack entering April in several basins across Montana was near normal. The current snowpack in the headwaters and mainstem of the Missouri River are 110 and 100 percent of average, respectively. Areas further north along the Rocky Mountain Front reflect similar snowpack conditions. The composite snowpack for the St. Mary and Milk River basins are approximately 120 percent of average; however the total precipitation is 95 percent of average for the water year. At this time, the snowmelt runoff for the St. Mary basin is anticipated to

be near average. The snowmelt runoff in the Milk River basin is anticipated to be much below average this season and in general has not contributed significantly to the inflows of Fresno Reservoir thus far. Therefore any additional runoff will depend on spring and summer rains.

The Milk River Joint Board of Control adopted an irrigation allotment for the season of 1.50 acre-feet per acre during the board meeting on April 15. This allotment reflects the overall water supply situation. Most of the inflow into Fresno will be derived from the St. Mary system and due to the below average storage in Fresno and Nelson Reservoirs, timing will be the key to providing the water supply for the Milk River Project. Reclamation will continue to closely monitor precipitation and streamflow conditions during the next few months before recommending an increased allotment for the Milk River Project water users.

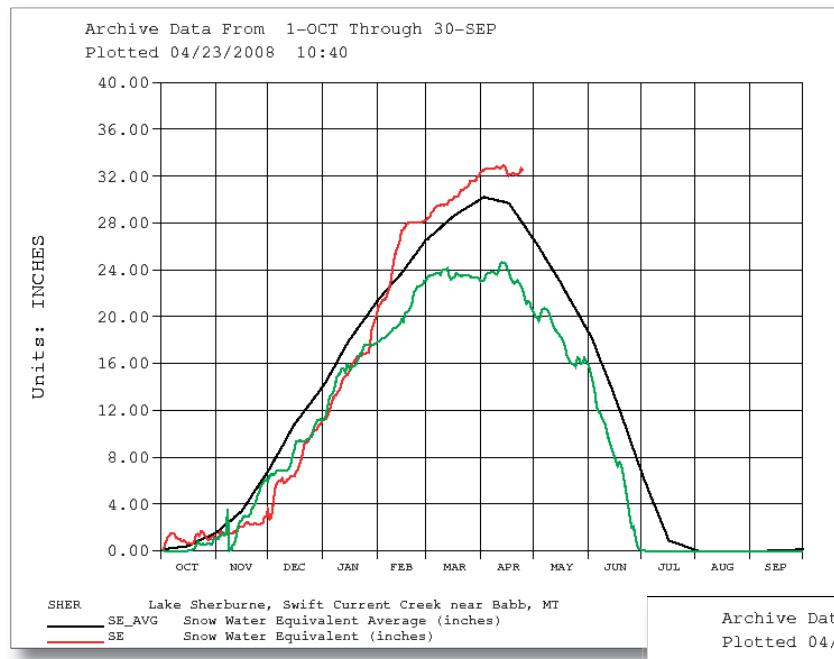
Storage as of April 23, 2008

Reservoir	Storage (acre-feet)	% Normal	% Full
Lake Sherburne	12,100	61	18
Fresno	37,700	58	41
Nelson (active)	33,400	88	65

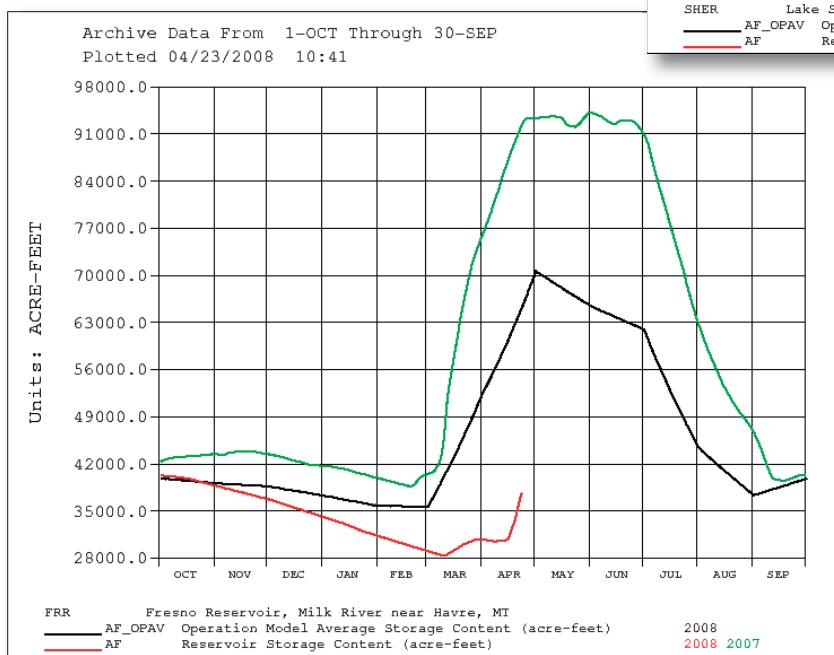
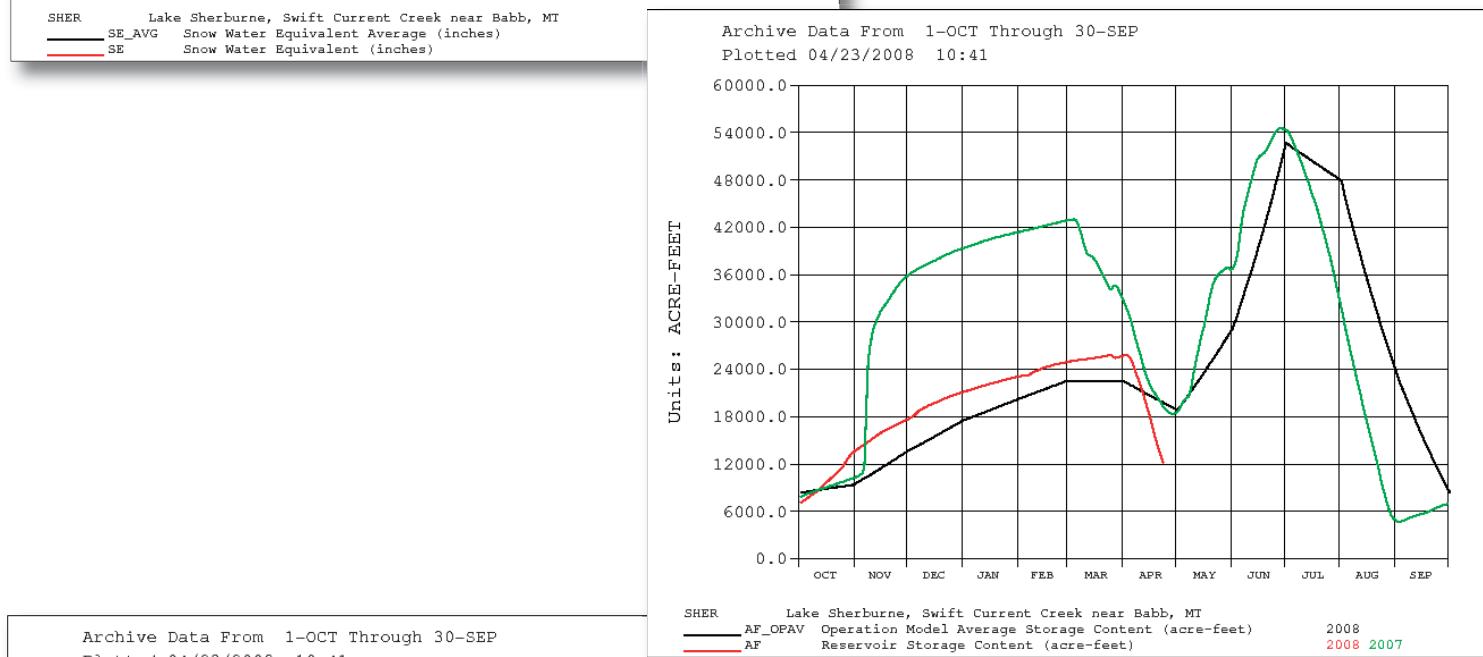


Sherburne Dam

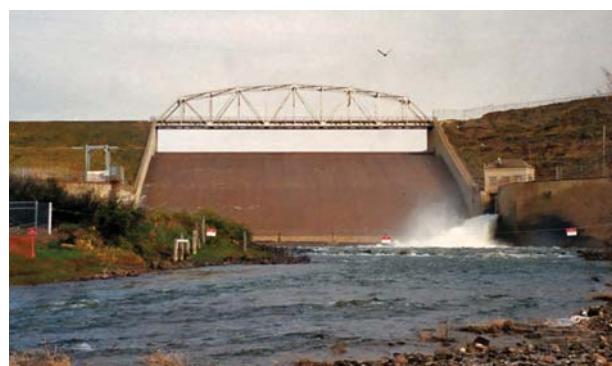
Lake Sherburne Snowpack



Lake Sherburne Storage



Fresno Reservoir Storage



Fresno Dam

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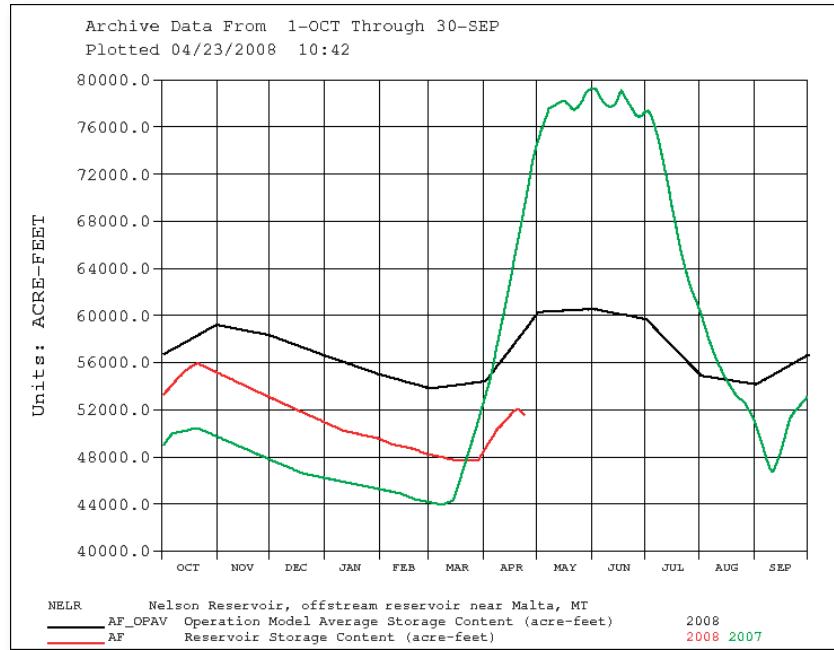
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Nelson Reservoir Storage



Nelson Reservoir

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